IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

AS.No. 607 of 1993()

OS.156/1991 of SUB COURT, MANJERI
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APPELLANT - PLAINTIFF:

M.N. SHAJAHAN, S/O. MUHAMMED KUNJU, KARUVAMBRAM AMSOM AND MELAKKAM DESOM, ERNAD TALUK, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER M. MUHAMMED KUNJU, KARUVAMBRAM AMSOM AND MELAKKAKAM DESOM, ERNAD TALUK.

BY ADV. SRI.R.SREEDHARAN NAIR
SRI.SUBHASH CYRIAC

RESPONDENT - RESPONDENT:

MALAPPURAM MUNICIPALITY, REPRESENTED BY ITS COMMISSIONER, MALAPPURAM.

BY ADV. SRI.KPG.MENON
SC FOR MALAPPURAM MUNICIPALITY
SRI.BABU S. NAIR

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 607 OF 1993

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Dated this the 25th day of September, 2007

J U D G M E N T

Plaintiff in O.S. No. 156 of 1991 on the file of the Sub Court, Manjeri is the appellant. Appellant filed the suit for return of money deposited by him.

2. Defendant, Malappuram Municipality, constructed a Gallery-cum-shopping Complex. Various shop rooms in the building were auctioned. Plaintiff was the successful bidder in respect of shop room No.12. He had executed an agreement and deposited an amount of Rs.48,240/- as earnest money deposit. He had also deposited more than Rs.5,000/- by way of rent also. Subsequently, plaintiff informed the Municipality that he was not in a position to conduct the business in the shop room. According to the plaintiff he surrendered the shop room on 17.3.1989. The stand taken by the plaintiff was that he did not conduct any business in the shop room and the key of the shop room was not handed over to him. Plaintiff's case was that even if any rent was payable, he was liable to pay the same from 14.7.1988 to 17.3.1989,

the date on which he surrendered the shop room. According to the plaintiff the rent due was Rs.16,080/- and after adjusting the same from the amount he had deposited, he was entitled to get the balance amount.

3. Defendant filed a written statement contending that the suit as framed was not maintainable. Plaintiff was only a licensee and terms of licence was governed by the rules and bye-laws approved by the Municipal Council on 23.11.1987. The averment that the plaintiff executed the agreement without understanding its contents was denied. It was admitted that on 17.3.1989 plaintiff made a request to the Municipality that he wanted to surrender the shop room and the same was considered by the Council on 16.5.1989. The Council had decided to accept the request at the risk and cost of the plaintiff. It was further contended that as per the decision of Council dated 7.3.1980, the Municipality decided to recover one year's rent from the plaintiff as damages due to the premature surrender and it was decided to forfeit the same from the deposit made by the plaintiff. The Municipality prayed for dismissal of the suit.

4. Trial court after considering the evidence on record found that the suit is hit by the provisions of Section 392 of the Municipalities Act, 1960 corresponding to Section 544 of the Kerala Municipalities Act, 1990 and dismissed the suit. Challenging the decree and judgment passed by the trial court, plaintiff has filed this appeal.

5. Learned counsel appearing for the appellant has strenuously argued before me that the finding of the court below is illegal. It is argued that on an earlier occasion plaintiff filed O.P. No.46 of 1990 as an indigent person and that O.P. was withdrawn. It is argued that the Municipality itself had admitted that plaintiff had requested to surrender the shop room on 17.3.1989. It is argued that Exhibits A9 and A10 are two petitions filed by the plaintiff before the Municipality giving all the details regarding the cause of action, the amount claimed, etc., which are sufficient notices as contemplated in Section 392(1) corresponding to Section 544(1). It is argued that the court below has not considered whether those two petitions filed by the plaintiff can be considered as notices. A notice contemplated under Section

392 need only satisfy the requirements of that Section. It need not be sent by a lawyer. It need not even be captioned as a suit notice. The only question arising for consideration is whether the Municipality was informed about the cause of action, nature of the reliefs sought for, amount of compensation claimed, name and addresses of the plaintiff, etc. The court below has not considered whether Exhibits A9 and A10 are sufficient notices as contemplated in Section 392 (1) of the Act. The court below has also not considered any of the contentions raised by the plaintiff. So I have not other option, but to set aside the decree and judgment and remand the case for fresh disposal in accordance with law.

6. In the result, appeal is allowed. The decree and judgment passed by the Sub Court, Manjeri are hereby set aside and the suit is remanded to the trial court for fresh disposal in accordance with law after giving both sides opportunity to adduce further evidence, if so advised. The suit being a money suit of the year 1991, the learned Sub Judge shall make every endeavour to dispose of the suit as expeditiously as possible, at any rate, within four months from

the date of appearance of the parties.

Parties are directed to appear before the court below on 5.11.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 607 OF 1993

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J U D G M E N T

25TH SEPTEMBER, 2007